

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES**

*Filed with
Town Clerk
March 2, 2010*

FEBRUARY 23, 2010

**TOWN OF BIG FLATS
MEETING ROOM
7:00PM**

MEMBERS PRESENT: Joe Rowe, Tom Clark, Don Williams, Heather Hanson

MEMBERS ABSENT: Dick Seely

STAFF PRESENT: Stephen Polzella, Director of Planning, Brenda Belmonte, Secretary

GUESTS: Tina Lando, Chuck Coons, Diane Lantz

Chair Rowe opened the meeting at 7:00pm, noting member Dick Seely was absent.

MINUTES

February 23, 2010

**Motion by Clark, seconded by Hanson to approve the minutes of February 23, 2010,
Discussion, None, Motion Carries 4-0.**

PUBLIC HEARING
LANDO AREA VARIANCE
TAX PARCEL 58.03-1-4

Chair Rowe opened the public hearing at 7:02pm noting it had been duly published in the Star Gazette.

Speaking For: Tina Lando replied to the variance criteria in the following order:

5. Whether the alleged difficulty of compliance was self-created.
Lando stated that at the time she purchased the property it was designated family / residential (210) for tax purposes. She presented a tax bill designating the property as such, stating she purchased it on that basis. Therefore Lando does not feel this was self-created.
4. Whether the proposed variance will have an adverse affect on the neighborhood.
Lando referred to a letter from Andy Avery noting his conditional approval of the proposed use of the property.

3. Whether the requested variance is substantial.
Lando acknowledged that the amount of the request (36%) is something she cannot change.
2. Whether the benefit sought could be achieved by some other method.
The adjacent property is no longer for sale; even it was she could not afford it. Lando also offered to purchase the property across from her, however the owner was not willing to sell.
1. Whether an undesirable change would be produced in the character of the neighborhood.
Staff has agreed it would not produce an undesirable change.

Polzella responded to Lando's comments:

The property was classified as single family residential due to the pre-existing non-conforming use. Staff had noticed some construction activities taking place without a permit. This opened the process, which determined the property had been vacant beyond the one-year limit.

Staff consulted with Andy Avery and Fagan Engineers, and it was determined that a traffic study was not warranted for this proposed use.

Polzella acknowledges that the applicant has looked into purchasing neighboring properties.

Staff has agreed that the proposal would not produce an undesirable change in the neighborhood.

A letter was received on February 18, 2010 from neighboring property owner Malcolm Lane:

Mr. Lane feels that the lot is much too small for the proposed use. The applicant should have known about the restrictions prior to purchase. Lane believes an approval would result in cars parking on his property. He states that his property surrounds the applicant's lot on 3 sides; there is no road frontage on County Route 64. In his opinion, even the right of way is vague.

Polzella clarified that Lane does not own property on three sides. Also, research has shown that the noted right-of-way (access) does exist. If the variance is approved, the applicant would be held to parking standards as dictated.

Staff recommends granting a conditional variance for general office use with a proposed scale of a specific number of vehicles. Any future applicants would be required to an

additional review. The board needs to determine a fair number of vehicles to hold the use accountable to. As long as it is under ten it would not be a detriment to the traffic network.

Speaking against: None

Public Hearing closed at 7:20pm

RESOLUTION ZBA-1-2010

Lando – Area Variance (Lot Width)

Tax Parcel # 58.03-1-4

Resolution by: Clarke

Seconded by: Williams

WHEREAS the Zoning Board of Appeals of the Town of Big Flats has received an application from Agostinha Lando, owner of tax parcel #58.03-1-4, for relief from Section 17.16.020(J)(1) of the Town of Big Flats Zoning Law, Minimum Lot Width; and

WHEREAS the Town of Big Flats Planning Board, Resolution P-2010-4, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a favorable recommendation for a conditional approval; and

WHEREAS a public hearing was held on February 23, 2010; and

WHEREAS the Town of Big Flats Planning Staff provided a staff report dated February 16, 2010; and

WHEREAS granting this area variance would provide a 72 foot relief, 43%, from Big Flats Zoning Law 17.16.020(J)(1), Minimum Lot Width; and

WHEREAS the proposed action is an Unlisted action pursuant to SEQR 6 NYCRR Part 617 and the Planning Board of the Town of Big Flats made and found a negative declaration of significant environmental impacts Resolution P-2009-48; and

WHEREAS this board has expressed concern with the idea of permitting any use of this lot due to potential impacts related to traffic and public safety; and

WHEREAS this boards considerations and review are solely based on the notion that relief would be conditioned to the proposed use of “Office, General or Professional” and the unique physical conditions of the property; and

WHEREAS on the basis of materials submitted by the applicant on and before February 12, 2010 this board finds criteria #1, BFZL 17.60.120-B, to pass, 4-0; and

WHEREAS on the basis of materials submitted by the applicant on and before February 12, 2010, this board finds criteria #2, BFZL 17.60.120-B, to pass, 3-1; and

WHEREAS on the basis of materials submitted by the applicant on and before February 12, 2010, this board finds criteria #3, BFZL 17.60.120-B, to fail, 4-0, because the request is to provide 43% relief; and

WHEREAS on the basis of materials submitted by the applicant on and before February 12, 2010, this board finds criteria #4, BFZL 17.60.120-B, to pass, 3-0-1 deferral; and

WHEREAS on the basis of materials submitted by the applicant on and before February 12, 2010, this board finds criteria #5, BFZL 17.60.120-B, to fail, 4-0; and

NOW THEREFORE BE IT RESOLVED to grant approval of the Area Variance Request by Agostinha Lando, owner of tax parcel #58.03-1-4, for relief from Section 17.16.020(J)(1) of the Town of Big Flats Zoning Law, Minimum Lot Width Use, based on the review of the criteria in the BFZL and a scale of business not to exceed 10 vehicles per calendar day.

Request Granted: **AYES:** Williams, Clarke and Hanson
 NAYS: Rowe
 ABSTAINED:

Dated: Tuesday, February 23, 2010
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Discussion:

Williams asked the applicant if the easement was documented.

Lando presented a letter from Attorney Richard Rossettie, stating legal access to County Route 64 was filed at the Chemung County Clerk's office on February 26, 1955.

Clark asked if the access remains with the property for life to which Polzella replied yes.

Rowe asked if any decision would be grandfathered in.

Polzella said yes, it would need to adhere to that decision.

Rowe's concern with having a (long-term) conditional variance is that it needs to be continually monitored by staff. If a limit of 5 vehicles is set, who would be there to monitor that? Any set limit would require action by the town. Rowe referred to the letter from Mr. Lane where he is concerned with the impact to his property.

Clark believes that the property needs to be used; the applicant pays property taxes and is being told it is not usable.

Rowe stated that the town is not responsible to the applicant. This is the second year it has been vacant. The applicant purchased the house in 2008. If the property was made into a house (residential) at that time we would not be here. The applicant now wants to make it into a business. The town had several open meetings when the zoning was changed; everyone was allowed to question the changes at that time. As a board, we deal with the code.

William's feels this is a unique situation. Although he understands Mr. Lane's point of view, he believes an exception could be made as long as conditions are established.

Board review of Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood.
Rowe, No; Clark, No; Williams, No; Hanson, No
2. Whether the benefit sought can be achieved by some other method.
Rowe, Yes; Clark, No; Williams, No; Hanson, No
3. Whether the requested variance is substantial.
Rowe, Yes; Clark, Yes; Williams, Yes; Hanson, Yes
4. Whether the proposed variance will have an adverse affect on the neighborhood.
Rowe, No; Clark, No; Williams, No; Hanson, No
5. Whether the alleged difficulty of compliance was self-created.
Rowe, Yes; Clark, Yes; Williams, Yes; Hanson, Yes

Rowe stated that a conditional approval would put the town in a position to have to monitor the situation. Monitoring becomes difficult for a busy staff. Once you set a precedent and receive two or three additional long-term conditional approvals, it becomes unmanageable for a small staff.

MEMBER COMMENTS

Discussion to elect Tom Clark as vice chair for the year.

STC Leadership Conference Thursday, April 15, 2010

**Motion to adjourn at 8:18pm by Clark, seconded by Hansen, Discussion, None,
Motion Carries 4-0.**

Meeting adjourned at 8:19pm.